TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 147.

JUAN GARCIA BOSQUE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED OCTOBER 31, 1906.

(20,442.)

(20,442.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 477.

JUAN GARCIA BOSQUE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Stipulation as to record	1	1
Caption	2	1
Petition to be admitted to practice	2	1
Certificate of Blas C. Alcuaz	3	2
Enrique Llopiz y Becerra	4	2
Tiburcio Saenz Roman	4	3
Simplicio del Rosario	5	3
Francisco Ortigas y Barcinas	5	3
Rosario *et al.*	6	3
Order referring petition to attorney general	6	4
Report of attorney general, March 11, 1901	7	4
Order to comply with request of attorney general	8	5
Certificate of Antonio Malvehy y Galup	8	5
Record of Juan Garcia Bosque in College of Lawyers	9	5
Order denying petition	12	7
Petition for rehearing	12	7
Affidavit for rehearing	16	10
Opinion	18	11
Motion that court declare right to practice law	23	14
Order overruling motion	25	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 6, 1906.

	Original.	Print.
Petition for writ of error	26	16
Assignment of errors	27	16
Order allowing writ of error	28	17
Writ of error (copy)	29	18
Citation (copy)	30	18
Security for costs	31	19
Clerk's certificate	32	19
Writ of error (original)	33	20
Order allowing writ of error	34	21
Citation and service	35	21

1 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law. File No. 68.

JUAN GARCIA BOSQUE, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Stipulation.

It is hereby stipulated, that the *foregoing* transcript, consisting of twenty-nine and one-half (29½) typewritten pages, is a true translated copy of the record, proceedings and judgement in the matter of the petition of Juan Garcia Bosque to be admitted to the practice of law in the Courts of the Philippine Islands.

In testimony whereof the Honorable Attorney General of and for the Philippine Islands, in representation of the United States, and the undersigned attorney in behalf of the said Juan Garcia, plaintiff in error, sign this stipulation at Manila, this — day of August, 1906.

GREGORIO ARANETA,
Attorney General of the Philippine Islands.
WM. J. ROHDE,
Attorney for the Plaintiff in Error.

2 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

File No. 68.

In the Matter of the Petition of JUAN GARCIA BOSQUE for Admission to the Practice of Law in the Philippine Islands.

Record.

Be it remembered, that, on the twenty-fifth day of February, 1901, there was filed in the office of the Clerk of the above named Court, by Juan Garcia Bosque, the following petition:

To the Honorable the Chief Justice of the Supreme Court of this Archipelago:

Don Juan Garcia Bosque, a native of Jaca, Spain, of age, attorney-at-law and a resident of this city, respectfully states before Your Honor:

That by enclosed certified copies he proves to be an attorney-at-law, a graduate of the University of this City; that he practiced his

profession in these Islands from the year 1892 until the cessation of the Spanish Courts of Justice; that he is of good character and has not been inscribed in the record of Spanish nationality,
3 in consequence whereof I have lost this, in accordance with the provisions of the Treaty of Paris, and therefore I am neither a subject nor citizen of any foreign government, and consequently, in my opinion, have the condition required by General Order No. 29, July 19, 1899, of the United States Military Government in these Islands for continuing the practice of my profession.

I pray of Your Honor to be pleased to admit me to the practice of law as an attorney in these Islands and to fix a day and hour for taking the oath provided for in said General Order.

Manila, February 25, 1901.

(Signed) JUAN G. BOSQUE.

In support of said petition the following documents and papers were filed:

I, Don Blas C. Alcuaz, licentiate in jurisprudence and General Secretary of the Loyal and Pontifical University of Santo Tomas of Manila, hereby

Certify: That Don Juan Garcia Bosque, a native of Jaca, province of Huesca, has studied and graduated all the classes of the faculty of law, undergone on March 15th, of the present year the examinations required by the degree of licentiate in said faculty, has obatained the note of Excellent, has been invested with said degree on the twenty first day of said month and year, and a diploma issued to him under even date, as appears in Record "F" / "57", Book 2 and in other documents on file in the Secretary's office under my charge and to which I refer.

At the request of the interested party I issue these presents, same having been approved by the Very Rev. Father Rector and sealed with the seal of this University in Manila on May 12, 1891.
4 (Signed) The General Secretary, BLAS C. ALCUAZ.

Approved—

(Signed) The Rector, FRAY JOSE M. GARCIA.

I, Don Enrique Llopiz y Becerra, Secretary Auditor of the Bar Association (Colegio de Abogados) of Manila,

Certify: That Don Juan Garcia Bosque has been a member of this Association without practice since May 26. 1891 to February 20. 1892 when he was authorized to practice his profession, having been classified among those of the third class; on January 14th, next year, he was included among those of the second class; he continued in this class until March 10th, of the same year when at his own request he ceased to be a member of the Association; during his stay he contributed to its maintenance by paying the quotas assigned to him; no unfavorable note or concept appears in his personal record on file in the office under my charge and to which I refer.

And at the request of the interested party I issue these presents,

approved by the dean and sealed with the seal of this Association in Manila, December 15. 1898.

(Signed) ENRIQUE LLOPIZ
Secretary Auditor.

Approved:
(Signed) The Dean, GONZALO BESPEDES.

I, Don Tiburcio Saenz Roman, Recording Clerk of the Court of First Instance of Iloilo, hereby Certify:

That Don Juan Garcia Bosque has practiced as an attorney in this Court without interruption since April 1. 1893, date on
5 which he took the prescribed oath, and complying with the order of the Hon. Judge issued today, and at the request of the party in interest, I issue herewith this certificate in Iloilo on the 17th, of November 1898.

(Signed) TIBURCIO SAENZ.

Approved:
(Signed) MOLINO VANDERVALLE.

I, Don Simplicio del Rosario, Recorder of Property of the Northern District of Manila and in charge of the Spanish Nationality Record,

Certify: That having examined the statements on file in this Office under my charge, it does nor appear that Don Juan Garcia Bosque has declared his intention to retain the Spanish nationality.

And that it may so appear I issue these presents in Manila on February 25. 1901.

(Signed) SIMPLICIO DEL ROSARIO.

I, Don Francisco Ortigas y Barcinas, attorney-at-law, Recorder of the Property of the Southern District of Manila and in charge of the Spanish Nationality Record,

Certify: That having examined the statements on file in this Office under my charge, it does not appear that Don Juan Garcia Bosque declared his intention to retain the Spanish nationality.

And at the request of the interested party I issue these presents in Manila on February 23. 1901.

(Signed) FRANCISCO ORTIGAS.

6 We the undersigned practicing attorneys-at-law and residing in this city,

Certify: That the attorney-at-law Don Juan Garcia Bosque, known to us for a long time, has always observed an irreproachable moral conduct and is esteemed as a person of high morality.

And that it so may appear we sign these presents in Manila on February 25. 1901.

(Signed) SIMPLICIO DEL ROSARIO, *Attorney-at-Law.*
E. GUTIERREZ, " " "
A. C. HERRERA, " " "

On the sixth day of March, 1901, the Supreme Court of the Philippine Islands, sitting in banc, took the following action upon said petition:

The Supreme Court of the Philippine Islands, in Banc.

MARCH 6, 1901.

Chief Justice,
Attorney General,
Araullo,
Young,
Araneta,
Llorente,
Chanco.

The foregoing petitions with six accompanying documents of Don Juan Garcia Bosque, requesting that he be allowed to practice law, having been laid before the Court, the Justice named on the margin ordered:

"Referred to the Attorney General."

So they decided, the Hon. Chief Justice signing. To which I certify.

(Signed) C. S. ARELLANO.
HIGINO BENITEZ.

The papers were today, March 9. 1901, delivered to the Attorney General. To which I certify.

BENITEZ.

7 The Court in Banc.

The Hon. Attorney General in view of the petition presented by Don Juan Garcia Bosque, a native of Spain, requesting authorization to practice law in these Islands, and for which purpose he encloses several certificates, states:

1. That so as to be able to render an opinion in accordance with the legal provisions in force, he considers it necessary and indispensable that there be joined to this personal record the one formed in the Secretary's office of the former "Audiencia Territorial," since petitioner, Mr. Garcia Bosque, was admitted to practice law or since he begun to hold an official position in the judicial or prosecuting branch.

2. That the Secretary reports, after examining the antecedents and records under his charge, everything relating to petitioner.

3. That the judges of Iloilo and Cavite report respecting Mr. Bosque, after examining the antecedents and records in their respective Courts; and

4. That the Captain of the Port of this City and the management or direction of the "Compania General Tabacalera" charged with the traffic of the mail steamers plying between Manila and Barcelona be called upon to furnish information respecting the time said Garcia Bosque sailed away and when he returned and landed in the port of this city.

The Attorney General reserves to himself the right to render his opinion respecting the pending petition after examining the documents cited, and therefore

The Attorney General returns enclosed file and hopes that the Court will be pleased to make the order as requested and in the tenor indicated, unless the Court deems it convenient to decree otherwise.

Manila, March 11. 1901.

(Signed) FLORENTINO TORRES.

8 Compliance with the request of the Attorney General was ordered by the said Supreme Court in the form following:

Office of the C-ief Justice of the Supreme Court of the Philippines.

MARCH 18, 1901.

This file having been laid before the Court, let the request of the Attorney General set out in his opinion be complied with, and this done, let the matter again be brought before the Court.

(Signed) ——— ———.

And in compliance with said Order the following certificates were filed:

I, Don Antonio Malvehy y Galup, vice secretary of the "Compania General de Tabacos de Filipinas,"

Certify: That according to the documents on file in these offices, it appears that Don Juan Garcia Bosque sailed as a passenger on the steamer "Leon XIII," which left this port on May 30, 1899 and arrived at Barcelona on July 2nd, of the same year; and that he returned on the steamer "Isla de Luzon," which sailed from Barcelona December 9, 1900, and arrived in Manila January 11, of the present year.

And that it may so appear, I issue this present certificate at the request of the party interested in Manila, March 14, 1901.

(Signed) A. MALVEHY,
Vice Secretary.

9 *Record of the Office of the Secretary—Number* 100 *Bureau.*

Year 1892.

Supreme Court of Manila.

Record of Mr. Juan Garcia Bosque, Lawyer.

President of the Court, Most Illustrious Mr. Joaquin de Bustillo.

Secretary, Mr. Mariano de Caldes.

The Committee of this illustrious College, in view of the petition of the lawyer Mr. Juan Garcia Bosque, admitted to said College without practicing, asking to be included in the active list, inasmuch as the General Government on the twelfth instant, granted him the provisional separation from the Corps of Engineers of Forests to which he belonged, and taking into consideration, in consequence of the proofs presented to this effect, that there does nos exist either

nor during said separation the reason of incompatibility pointed out in the number 2 of the article 482 of the Organic Compilation of January 5th, last, preventing Mr. Bosque from practicing his profession, on date 19th instant decided to comply with his petition, but previous to his beginning to practice, he must be sworn in due form before the Committee of this Court, which Your Lordship presides worth-ly, in accordance with the article 477 and 478 of the Compilaction already mentioned.

This, in compliance with said decision, I have the honor to tell you for the legal effects; and I must add that this Seniority making use of the authorization received from the Economic Commission in its meeting of the 12th of last January has decided to clas-ify provisionally the said Garcia Bosque amongst the lawyers of third class.

Manila, February 22, 1892.

(Signed) J. J. DE ICAZA.

10 PRESIDENCY OF THE SUPREME COURT OF MANILA,
March 11th, 1892.

To the illustrious President of this Supreme Court:

The Presidency is informed; let it be taken into consideration when the committee will meet, leaving aside the information in writing of the Fiscal of His Majesty for the sake of brevity of the matter.

(Signed) FUENTES BUSTILLO.

M-ssrs. President, Fiscal of H. M. Orduna Cerquella.

In the Committee of this Supreme Court, the gentlemen noted on the margin being assembly on March 18th, 1892, the session was publicly opened, and Mr. Juan Garcia Bosque, a lawyer of this College, promised under oath to submit to the Constitution of the Monarchy, be faithful to the King and perform well and loyally all the obligation- that the laws and rules will impose upon him, and the act was ended, it is stated so, and the concerted party signs, of which I certify.

(Signed) JUAN GA. BOSQUE.
(Signed) CALDES.

Illustrious Colleges of Lawyers, Manila.

Seniority.

MANILA, *March* 16, 1893.

Attach to the record of the interested party, and com-unicate it to the offices of Justice.

(Signed) —— ——.

Executed on said date.

(Signed) —— ——.

MOST EXCELLENT SIR: This Seniority by decision of the 10th instant and in accordance with the petition of the interested
11 party, came to declare Mr. Juan Garcia Bosque separated from this illustrious College of Lawyers, in which he ceases to be incorporated.

Which in compliance of said decision, I have the honor to tell you for the legal effects.

Manila March 15, 1893.

(Signed) J. J. DE ICAZA.

To the illustrious President of the Supreme Court of Manila.

College of Lawyers of Manila.

MANILA, May 29, 1891.

Let it pass to the Department of Civil causes.

(Signed) ——— ———.

Executed on same date.

(Signed) LOPEZ OLIVA.

MOST ILLUSTRIOUS SIR: Complying with the request of Don Juan Garcia Bosque, and in accordance with the provisions of the Article 483 of the Organic Compilation of the Branch of Justice of Ultramar, this Seniority, by decision of the 19th instant, enables him to defend as a Lawyer his mother Mrs. Miguela Bosque in the civil cause against Aldecoa & Co. of this city for indenmniz-ation of damages.

Which I have the honor to tell you for the legal effects.

Manila May 26, 1891.

(Signed) The Senior, JOSE JUAN DE ICAZA.

To the most illustrious President of the Supreme Court of Manila.

On the twenty-seventh day of July, 1901, the said Supreme Court did decide and pass upon the said application of the said Juan Garcia Bosque, as shown by the following extract from the minutes of said Court.

12 *Extracts of the Minutes of the Session Held This Day, July 27, 1901.*

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

The Clerk having laid before the Court the pending petition of Mr. Bosque to be admitted to the practice of Law, the Court decided to deny the petition as applicant does not possess the political qualifications required by law for the practice of his profession in the Philippine archipelago.

(Signed) F. C. FISHER,
Clerk of the Supreme Court of the Philippines,
By E. H. COLE, *Deputy.*

On the eighth day of November, 1901, the said Juan Garcia Bosque did file in the office of the Clerk of said Supreme Court a

petition for rehearing in the foregoing above entitled matter. Said petition was as follows:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

In the Matter of the Application of JUAN GARCIA Y BOSQUE, Requesting the Appointment of a Day for the Taking of the Oath Previous to Enrollment.

(*Petition for Re-hearing.*)

The Honorable the Justices of the Supreme Court:

13 The undersigned respectfully submits: That in July last he was refused admission to practice on the ground that he did not possess the necessary political qualifications, according to the laws in force in these Islands, and especially General Order number 29, dated July 11th, 1899. Inasmuch as the provisions of that order have been modified by the Code of Civil Procedure, which, in article 13, recognizes the right that the 9th article of the Treaty of Paris acknowledges, and which the order mentioned ignored, that Spaniards residing at that time in these Islands could continue in the practice of their profession, the applicant again respectfully requests that a day may be named when he may take the oath previous to the practice of his profession, in accordance with the provisions of the Code.

In this behalf the applicant respectfully submits:

I. The 9th article of the Treaty of Paris states that peninsular Spaniards residing in these Islands are to continue the practice of their professions, submitting themselves to the same regulations as may be imposed on other foreigners. This does not mean that if such foreigners do not practice their professions, Spaniards will neither be allowed to do so, but merely that they must submit to the laws applicable to all foreigners who practice. It could not be otherwise, in view of the spirit of the Treaty, which is to effect a change of sovereignty only with the greatest respect for existing rights, and with as little injury to the individual as possible. Even if the text were not so clear, interpretation would have to give it this effect.

II. Neither did the laws applying to foreigners, in force at the time of the Treaty of Paris, forbid them to practice their professions. Under the Royal Decrees dated October 3rd, 10th and 11th, 1879, the Governor General was authorized to qualify foreigners for the practice of their professions without excepting anyone; and

14 before that, by Royal Order of May 12th, 1867, the American Doctor Don Jose Francisco Martinez, was permitted to practice his profession.

III. All lawyers who *are* practicing when the Spaniards' Sovereignty ceased necessarily suffered more or less of an interruption in their practice, such as was the case of the undersigned who, when Iloilo was left by the Spaniard troops, was also compelled to leave on December 24, 1898, and came to Manila, intending to go back to Iloilo whenever order would be re-established, and leaving behind his house and property. It was only when that town, as well as his

house with all that it contained, was destroyed by fire, and seeing the difficult, unquiet and excessively high cost of living at Iloilo or at Manila, further not knowing when Courts of Justice would be established he left for Europe intending to return to take care of his property and practice his profession as soon as he was once restored to health. So that, although he was ready to practice at Barcelona, he never advertised nor took any steps to get clients, in spite of his living at that city for more than one year.

IV. The 13th article of the Code of Civil Procedure accords the rights to practice to those who have been duly licensed under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar. The undersigned having obtained the proper authorization according to law under the Sovereignty of Spain, as appears from the records of this Court, is, it is respectfully submitted, entitled to qualify as a member of the Bar in these Islands. He is a lawyer who graduated from the University of this city, practiced for many years and still resides in the Islands for the purpose of practicing, and of devoting himself to the labors relating to his profession, desirous of practicing, licensed, and enjoying good fame and reputation, as he by the certificate hereto attached proves, he es entitled to practice as a lawyer in these Islands.

Therefore, he respectfully re*ti*-rates to the Court his request, which he believes to be founded in justice.

Dated Manila November 8, 1901.

(Signed) JUAN G. BOSQUE.

In support of said petition for re-hearing, the following certificates and affidavit were filed in the office of said Clerk, namely:

The undersigned merchants and residents of this City,

Certify: That they know that Don Juan Garcia Bosque enjoys a good name and reputation in these Islands as an attorney-at-law.

Manila, November 8. 1901.

(Signed) THE PHILIP-INE SUGAR ESTATES.
DEVELOPMENT CO., LTD.,
By FRANCISCO GUTIERREZ, *Gen'l M'g'r.*
LIZARRAGA HERMANOS, *Manila,*
Ffs LIZARRAGA HERMANOS.
WARNER, BARNES & CO., LTD.,
By J. A. MACLEOD, *Sub-Manager.*
G. J. MILLIACSON.
FROEHLICH & KUTMER PUASE.
OSCAR SUTRO.
BALDOMERO DE HAZANAS.
MENDEZONA & CO., IN LIQUIDATION,
By F. GARCIA.
C. PASCUAL, *Secret'y J. y C. Munoz.*
THE SPANISH PHILIPPINE BANK,
By the Director, VENANCIO SALBA.
ENRIQUE D. CARSON Y CALDEZ.
TRINIDAD JURADO.
THOMAS L. HARTIGAN.

16 The undersigned merchants and residents of this City,
Certify: That they know that the attorney-at-law Don Juan Garcia Bosque enjoys as such a good name and reputation and at his request we sign with pleasure these presents.

Iloilo, November 21, 1901.

(Signed) LUCHINGER & CO.
KER & CO.,
By J. M. UNDERWOOD.
INCHAUSTI & CO.,
By F. A. KAUFFURAND.
W. F. STEVENSON & CO.,
By J. RICHMOND.
Cia. General de Tabacos de Filipinas—
RUPERTO MONTINOLA.
W. LIZARRAGA.
WARNER BARNES & CO., LTD.,
By P. J. FEGUICAL, *Agent.*
SMITH BELL & CO.,
By BOL. SELLELL JUD.
P. A. EDUARD ANDREW.
HOLLAM & CO.
ARCTR. BUCHANAN.
J. H. GRINDROD.

(*Affidavit for Re-hearing.*)

To the Honorable Supreme Court of the Philippine Islands:

The sworn declaration of Don Juan Garcia Bosque respectfully shows:

That on the 24th of December, 1898, he was compelled to abandon his house in Iloilo because of the evacuation of that city by the Spanish troops, and, coming to Manila, resided in that capital at the house of his mother-in-law, now No. 649 Calle Sta. Mesa, until the 30th of May, 1899.

That on that date, because of the conditions prevailing in the Archipelago, and because his health was badly shattered, he left for Europe with the intention of returning when his health was re-established.

That he left his power of attorney with Senores Luchinger of Iloilo, to whom, as well as to his mother-in-law, he frequently
17 wrote of his intention to return to these Islands.

That during his absence in Europe he was in different places in Spain and France, residing for the most part in Barcelona, where he entered the College of Attorneys and the Academy of Jurisprudence, but neither announced himself as a lawyer nor practiced his profession.

That he did not return sooner to these Islands because of the alarming notices published by the press, that there was no personal security in Manila, and that several cases of kidnaping had occurred.

That for this reason when he finally returned to this Archipelago

he dared not bring wife and family, but that he instructed them to come when he was convinced of the baselessness of these accounts of personal insecurity in Manila.

That during his absence in Europe he had his personal property in the house of his mother-in-law and paid the housekeeping expenses of the said house.

That in this same house he established himself with his family on his return to this capital.

That when he petitioned last February for his admission to the bar, he did so with the belief that, no- having lost his domicile in these Islands, nor having by any express declaration reserved his Spanish nationality, he had acquired the rights of the citizens of these Islands according to the Treaty of Paris. And, although the Supreme Court declared otherwise in its decision of the 27th of July impliedly he is still a Spaniard, and he has not registered as such at the Spanish Consulate in the hope that this decision may be reformed, and in case it should be he will request the recognition of the rights conceded to Peninsular Spaniards by the 9th article of the Treaty of Paris.

(Signed) JUAN G. BOSQUE.

Subscribed and sworn to before me, at Manila, this 17th
18 day of December, 1901.

(Signed) —— ——.

On the fourteenth day of January, 1902, the said Supreme Court did render the following decision:

"In the Matter of the Petition of J. GARCIA BOSQUE for Admission to the Practice of Law in the Philippine Islands.

"The facts are fully stated in the opinion.

ARELLANO, *C. J.:*

"The cession of the Philippine Archipelago having been agreed upon by the parties to the Treaty of Paris of December 10, 1898, the compulsory subjection of the subjects of the ceding power to the new sovereign followed as a logical consequence. The status of these subjects was not uniform, as in addition to the natives there were others who were merely residents but who, equally with the natives, had interests and rights inherent in the nationality of the territory. With respect to these the special agreement contained in article 9 was established, by virtue of which it was agreed to accord them the right of electing to leave the country, thus freeing themselves of subjection to the new sovereign, or to continue to reside in the territory, in which case the expiration of the term of eighteen months without their making an express declaration of intention to retain their Spanish nationality resulted in the loss of the latter, such persons thereby becoming subjects of the new sovereign in the same manner as the natives of these Islands. The period of eighteen months began

to run from the date of the exchange of the ratifications of
19 the treaty—that is to say, from April 11, 1899, and expired
on the corresponding day of October, 1900. The petitioner absented himself from these Islands on May 30, 1899, and remained absent therefrom during the whole period. It was in January, 1901 that he returned to these Islands.

From this conduct on the part of the petitioner it is evident that he elected to take the first of the two courses open to him under his right of option. Neither the Government nor the courts can place any other construction upon the facts above related. Having left the Islands he had no occasion to make any declaration of his intention to preserve his Spanish nationality, which he carried with him on his departure. This nationality could be forfeited only by a continued residence in the ceded territory and a failure to make a declaration of intention to preserve it within the term fixed therefor. The conditions which gave rise to the presumptive change of nationality were *residents* and the lapse of eighteen months without express declaration to the contrary; these two conditions not being fulfilled there was no change of national status. Neither by the Government of Spain nor by that of the United States could the petitioner be regarded as a Filipino subject. By absenting from the territory he continued to be a Spaniard.

To native-born subjects of the territory no such right of option was accorded; it was expressly refused them upon the rejection by the American Commissioners of the proposition in favor of the inhabitants of the ceded territories made by the Spanish Commissioners in Annex No. 1 to the twenty-second protocol. (Conference of December 10, 1898.) The native subject could not evade the power of the new sovereign by withdrawing from the Islands, nor while continuing to reside therein make declaration of his intention to pre-
serve the Spanish nationality enjoyed under the former sov-
20 ereign. Neither the Government of the United States nor that of Spain can consider them as other than Filipino subjects. This is expressly stated by the Spanish Government in article I of its royal decree of May 11, 1901.

The dates fixed by the treaty by which the sovereignty of one nation is ceded to another are of the highest importance, they being part of the contract, and are not within the control of the subjects as are those relating to their individual rights by reason of the fact that the political rights of the contracting nations themselves are the subject of the agreement. It is for this reason that the Government of Spain in the royal decree above cited has always taken the dates fixed in the treaty of Paris as the starting point, and, moreover, expressly declares therein that persons who are natives or residents with the Government or authorities of such territories, lay claim to Spanish nationality preserved or recovered by virtue of said decree, except with the consent of such Government, or under treaty stipulations. (Art. 5.) The Government and Courts of these Islands should not act with less circumspection in the matter, and invade the sovereign rights of Spain by giving the presumptive nationality established by Article IX of the treaty of Paris an extent not war-

ranted by the conditions upon which it depends, to wit, residence coupled with failure to make an express declaration to the contrary. The ordinary provisions of local laws in their normal operation with regard to the effect of absence upon the retention of a residence or domicile can not therefore be relied upon, nor the presumption as to the intention of an absentee recognized by civil codes and international treaties, although the most general and almost the only proof allowed by statute as evidence of an intention to preserve a residence or domicile in a country is the maintenance of a dwelling or commercial establishment therein, upon which point, as also upon the fact that the petitioner became a member of the bar of
21 Barcelona upon his arrival in that city, we make no decision, not regarding it as of any moment in view of the conclusions above expressed. The fact is that one is to be regarded as having submitted to the new sovereign by the mere failure to make an express declaration, inasmuch, as without a residence *de facto* the declaration is of no significance, having been established for the express purpose of overcoming the effect of a continued residence, an act which in itself implies subjection to the new sovereign by giving rise to the presumption of waiver of Spanish nationality and the adoption of that of the territory.

The petitioner, can not, therefore, be considered to have lost his Spanish nationality by reason of his residence in the territory after the 11th of October, 1900, and his failure to make declaration of his intention to preserve it within the period agreed upon by the high contracting parties to the Treaty of Paris, and to have adopted the nationality of the native subjects under the presumption arising from the conditions expressed. He can only acquire it through voluntary renunciation of his present nationality by seeking to become naturalized in these Islands; but upon this matter this Court can decide nothing, there having been no legislation upon the subject up to the present.

The status of the petitioner with respect to the new sovereignty of the territory having been defined, it remains to determine the question raised as to whether Spanish subjects resident therein constitute an intermediate class between other foreign residents and the natives of the country in whose behalf some specially favorable conditions have been stipulated. Upon this point no proposition was made, even incidental-y, nor was any reference made to it in the discussions which preceded the treaty of Paris. The American Commissioners, referring to Spanish subjects, natives of Spain, simply said:
22 "Such persons have the fullest right to dispose of their property and remove from the territory or remain therein to continue to be Spanish subjects or elect the nationality of the new territory." (Memorandum annexed to Protocol No. 22.) "They shall also have the right to carry on their industry, commerce, and profession, being subject in respect thereof to such laws as are applicable to *other* foreigners." (Art. 9 of the Treaty of Paris.) The laws applicable to other foreigners were, prior to that treaty, the Law of Foreigners for the Ultramarine Province of July 4, 1870, and article 27 of the Civil Code. The first of these laws in its thirty-ninth

article authorized all foreigners to engage in any kind of industry in the Spanish ultramarine province subject to the laws prevailing therein, and to practice any profession for which the laws did not require a diploma of proficiency granted by the Spanish authorities. No one can doubt that legal profession is one of those for the practice of which the law required a diploma of proficiency granted by the Spanish authorities. The second law cited provides that foreigners in Spain shall enjoy the rights which the civil laws accord to Spaniards, subject to the provisions of article 2 of the constitution of 1876 — establishes the same restriction or limitation as the law of foreigners. Hence if other foreigners could not then engage in the practice of law, and by the express prohibition of the Code of Civil Procedure in force can not do so at the present time, neither can Spanish subjects do so, they being in *very* respect upon the same footing as other foreigners.

If, then, the petitioner upon his departure from these Islands on May 30, 1899, did not take with him the nationality of the native inhabitants impressed by the Treaty of Paris, which had been in force from the 11th of April of the same year; if he departed as a Spaniard and continued to be a Spaniard, by taking the first
23 course left open by the right of option stipulated in the treaty of Paris, without being affected by the presumptive nationality of the territory arising from the fact of residence and the lapse of the time fixed; if he had not elected to adopt this nationality of the territory by express declaration within the same period; if after the expiration of that period it is expressly provided that the right of option shall no longer be available, and that the only course is naturalization, as to which there has been no legislative enactment; if as a Spanish subject upon equal footing with other foreign residents be can not practice the legal profession under the law either prior or subsequent to the treaty of Paris, it is evident that this court can not regard the petitioner as possessed of the qualifications alleged.

The new petition presented by him for admission to the bar of these Islands must therefor- be denied, and it is so ordered.

Torres, Cooper, Willard, and Mapa, JJ., concur.
Ladd, J., did not sit in this case.
Petition denied.

On January 6th, 1906, the said Juan Garcia Bosque presented herein to the said Supreme Court the following motion:

Motion of Juan Garcia Bosque to be Admitted to Practice as an Attorney-at-Law Before This Honorable Supreme Court.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court.

Appears Juan Garcia Bosque and asks that the Honorable Supreme Court be pleased to declare that the petitioner has a right to

practice as an attorney-at-law in the Philippines before all
24 Courts. This motion is founded upon the accompanying affidavit.

Manila, January 6, 1906.

(S'g'd) WM. J. ROHDE,
Attorney for Petitioner.

Petition of Juan Garcia Bosque to be Admitted to Practice as an Attorney-at-Law Before This Honorable Supreme Court.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

CITY OF MANILA, *Philippine Islands, ss:*

Juan Garcia y Bosque, having taken legal oath declares: That on the tenth day of April 1899, and for eight years immediately prior thereto he practiced law continuously before the Courts of these Islands.

(Signed) JUAN GARCIA BOSQUE.

Subscribed and sworn to before me Juanuary 2, 1906, the affiant exhibiting to me his personal cedula No. AA-321079, issued at Manila March 18, 1905.

(Signed) VICENTE RODRIGUEZ DELGADO,
Notary Public.

My commission expires December 31, 1906.

25 On the sixth day of March, 1906, the said Supreme Court did pass upon and decide the above and foregoing motion as indicated by the following extract from the minutes of said Court, namely:—

Office of the Clerk Supreme Court of the Philippines, Manila, P. I.

MARCH 7, 1906.

Mr. W. J. Rohde.

SIR: This Supreme Court in session of the 6th, instant, decreed as follows:

"The Court in the matter of the motion of attorney Rohde, requesting that it be declared that Don Juan Garcia Bosque has a right to practice law before all the Courts in the Philippine Islands, has overruled the motion."

This I copy for your knowledge.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court.

Thereafter and on July —, 1906, a petition for a writ of error to the Supreme Court of the United States, accompanied by an assignment of errors, was filed in the office of the Clerk of the Supreme

Court of the Philippine Islands by William J. Rohde, attorney for said petitioner and plaintiff in error. Said petition and assignment of errors are as follows:

26 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law. File No. 68.

JUAN GARCIA BOSQUE, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Petition for Writ of Error.

And now comes Juan Garcia Bosque, petitioner and plaintiff in error herein, and says, that on or about the sixth day of March, 1906, the said Supreme Court did, by final judgment, deny his petition herein to be admitted to practice as an attorney-at-law in the Courts of these Islands, to the perjudice of said petitioner and plaintiff in error, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefor-, the petitioner prays that a writ of error may issue out of the Supreme Court of the United States in this behalf for the correction of the error complained of, and that a transcript of the record, proceedings and papers in the above numbered cause, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings be had as are proper in the premises.

Manila, July 14, 1906.

(Signed) C. W. NEY &
WM. J. ROHDE,
Att'y- for Petitioner & Pl'ff in Error.

27 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law. File No. 68.

JUAN GARCIA BOSQUE, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Assignments of Errors.

The petitioner and plaintiff in error in the above numbered cause, in connection with his petition for a writ of error, makes the following assignment of errors which, he avers, are inherent in the judgment of the Supreme Court in said cause.

The said Supreme Court erred in giving judgment against petitioner's right to practice law in the Courts of these Islands,

First,—Because said right is expressly guaranteed by Article IX of the Treaty of Paris, and is recognized by Section 13 of the Code of Civil Procedure of the Philippine Islands;

Second,—Because, while the power of said Supreme Court to control and discipline those practicing law within the Islands as well as the right to prescribe reasonable regulations for such practice, is unquestioned, the said Court has no power, jurisdiction or authority to deny or deprive a lawyer of his right to practice his profession, except for the reason and in the manner provided in said Code of Civil Procedure; and,

28 Third,—Because the right of the said Bosque to practice his profession was and is a vested right, of which he may be deprived only by due process of law, and for the proper exercise and enjoyment of which right the recognition by the said Supreme Court, in the manner and form herein prayed, is essential.

Manila, July 14, 1906.

(Signed) C. W. NEY &
WM. J. ROHDE,
Att'y- for Petitioner & Pl'ff in Error.

Thereafter, and on the — day of July 1906, the said Supreme Court did, by order, grant the writ of error as prayed and did issue citation thereon. Said order, writ and citation are as follows:—

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law. File No. 68.

JUAN GARCIA BOSQUE, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Order Allowing Writ of Error.

On this 23 day of July, 1906, comes the petitioner and plaintiff in error herein, by his attorney, and files herein and presents to the Court his petition praying for the allowance of a writ of

29 error and an assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such order and further proceedings may be had as are proper in the premises.

On consideration whereof the Court allows the writ of error and directs the preparation and certification of the transcript, as prayed.

Manila, P. I., July 23, 1906.

CHAS. A. WILLARD,
Associate Justice Supreme Court of Philippine Islands.

No. —.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and in the final judgment in the matter of the petition of Juan Garcia Bosque to be admitted to practice in the Courts of the Philippine Islands, now depending in the said Supreme Court, a manifest error has happened, to the damage of said Juan Garcia Bosque, as by his complaint appears, We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the petitioner in this behalf, do command you, that under your seal, distinctly and
30 openly, you send the record and proceedings, and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 10 day of November next, in the said Supreme Court, to be then and there held, that the records and proceedings and judgment aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of July, in the year of Our Lord one thousand nine hundred and six, and of the Independence of the United States of America, one hundred and thirty.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Allowed by,
CHARLES A. WILLARD.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA, *ss:*

To Senor Gregorio Araneta, Attorney-General of the Philippine Islands, Attorney for the United States and of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City
31 of Washington on the 10th day of November, 1906, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the Philippine Islands, wherein Juan Garcia Bosque is plaintiff and the United States is defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and speedy justice done to the parties in that behalf.

Given under my hand, at the City of Manila, Philippine Islands, in the year of Our Lord one thousand nine hundred and six, the 23rd day of July.

CHARLES A. WILLARD,
Associate Justice Supreme Court of Philippine Islands.

Service of above citation is hereby acknowledged.
GREGORIO ARANETA,
Att'y General.

Upon the conclusion of all of which proceeding the following bond for costs was presented and approved:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

File No. 68.

JUAN GARCIA BOSQUE, *Pa*intiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Bond for Costs.

I hereby acknowledge myself security for costs in the above entitled cause.
(Signed) WM. J. ROHDE.

Taken and acknowledged before me this 3rd day of Aug., 1906.
(Signed) J. E. BLANCO,
Clerk of the Supreme — of the Philippine Islands.

32 CITY OF MANILA, *Philippine Islands, ss:*

I, Wm. J. Rohde, a resident of the City of Manila, Philippine Islands, do solemnly swear, that after paying my justs debts and liabilities, I am worth the sum of Five thousand dollars, United States Currency, in real estate within the jurisdiction of this Court and subject to execution, levy and sale.
(Signed) WM. J. ROHDE.

Subscribed and sworn to before me this 3rd day of August, 1906, affiant exhibiting to me his personal Cedula No. 1399163 issued *at* the 27th day of February, 1906.
(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Approved,
(Signed) CHARLES A. WILLARD,
Associate Justice Supreme Court
Philippine Islands.

UNITED STATES OF AMERICA, *Philippine Islands, ss:*

In the Supreme Court of the Philippine Islands.

In pursuance of the command of the writ of error within, and in accordance with the stipulation hereto attached, I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, herewith transmit a true translated copy of the record, assignment of errors, and all proceedings in the matter of the petition of Juan Garcia Bosque to be admitted to practice as an attorney-at-law in the Courts of these Islands, lately pending in this Court, under my hand and the seal of said Court, the same consisting of thirty-one typewritten pages.

Witness my official signature, and the seal of said Supreme Court, this 23 day of August, in the year of Our Lord one thousand nine hundred and six, and of the independence of the United States of America the one hundred and thirty.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

33 No. —.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and in the final judgment in the matter of the petition of Juan Garcia Bosque to be admitted to practice in the Courts of the Philippine Islands, now depending in the said Supreme Court, a manifest error has happened, to the damage of said Juan Garcia Bosque, as by his complaint appears, We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the petitioner in this behalf, do command you, that under your seal, distinctly and openly, you send the record and proceedings, and judgment aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 10 day of November next, in the said Supreme Court, to be then and there held, that the record and proceedings and judgment aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23 day of July, in the year of Our Lord one thou-

said nine hundred and six, and of the Independence of the United States of America, one hundred and thirty.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Allowed by
CHARLES A. WILLARD.

34 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

At Law. File No. 68.

JUAN GARCIA BOSQUE, Plaintiff in Error,
vs.
THE UNITED STATES, Defendant in Error.

Order Allowing Writ of Error.

On this 23 day of July, 1906, comes the petitioner and plaintiff in error herein, by his attorney, and files herein and presents to the Court his petition, praying for the allowance of a writ of error, and an assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court allows the writ of error and directs the preparation and certification of the transcript, as prayed.

Manila, P. I., July 23rd, 1906.

[Seal Corte Suprema, Islas Filipinas.]

CHARLES A. WILLARD,
Associate Justice Supreme Court of Philippine Islands.

35 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA, *ss:*

To Señor Gregorio Araneta, Attorney-General of the Philippine Islands, Attorney for the United States and of the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington on the 10 day of November, 1906, pursuant to a writ of error

filed in the office of the Clerk of the Supreme Court of the Philippine Islands, wherein Juan Garcia Bosque is plaintiff and the United States is defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and speedy justice done to the parties in that behalf.

Given under my hand, at the City of Manila, Philippine Islands, in the year of Our Lord one thousand nine hundred and six, the 23rd day of July.

[Seal Corte Suprema, Islas Filipinas.]

CHARLES A. WILLARD,
Associate Justice Supreme Court of Philippine Islands.

Service of above citation is hereby acknowledged.

GREGORIO ARANETA,
Att'y General.

Endorsed on cover: File No. 20,442. Philippine Islands supreme court. Term No. 477. Juan Garcia Bosque, plaintiff in error, *vs.* The United States. Filed October 31st, 1906. File No. 20,442.

IN THE

Supreme Court

OF THE

United States

Juan Garcia Bosque,
Plaintiff in Error,
vs.
The United States,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

This case involves a construction of the Treaty of Paris.

The plaintiff in error contends that he has the right to practice law in the Philippine Islands and that he is unlawfully denied that right.

The record is made up of the different proceedings had before the Supreme Court of the Philip-

pines as that tribunal was constituted, first, under the government of military occupation by the United States' forces; secondly, under Act 136 of the Taft Commission the same being the organic act of the courts passed by the commission while acting by authority of the president only, and lastly, under the Act of Congress of July 1st, 1902, an act temporarily to provide for the administration of affairs of the civil government in the Philippine Islands. Said record shows the following:

That plaintiff in error is a native of Spain; that he was duly admitted to the bar of the Philippine Islands in the year 1891 and continued in active practice till December 24th, 1898, in the city of Iloilo. [Tr. pp. 1, 2 and 15; fols. 2, 3 and 24.]

That on December 24th, 1898, the fortunes of war compeled him to abandon all his possessions in the said city and retire with his family to Manila; that shortly after the date last named the said city of Iloilo was destroyed by fire following its bombardment by the American forces; that a general state of war existed throughout the islands following the above narrated events and was in existence when plaintiff in error embarked with his family for Barcelona, Spain, on May 30th, 1899; that he left the Islands because of said conditions and for the purposes of recuperating his health and that he at all times intended to

return thereto as soon as practicable; that he did return thereto on January 10th, 1901, and on February 25th, next following, applied to the Supreme Court of the Islands, as constituted under the said military government, for registration as a practicing attorney. [Tr. pp. 1 to 11.]

That on July 27th, next following, the said Supreme Court denied his petition upon the ground that he did not possess the necessary political qualifications. [Tr. p. 7; fol. 12.]

That on November 5th, following, he asked and was granted a re-hearing, the Insular Supreme Court, as constituted under the said Organic Act, on January 14th, 1902, rendering an opinion denying the petition. [Tr. pp. 11 to 14.]

That on January 6th, 1906, he presented a motion herein asking that the Supreme Court, as constituted under the said Act of Congress declare him qualified to practice his profession, setting forth by affidavit that on April 10th, 1899, the date of ratification of the Treaty of Paris, and for eight years prior thereto, he was a duly qualified and practicing attorney in the Islands, which motion the court denied. [Tr. p. 15.]

That he was at all the times herein mentioned of good moral character and professional standing.

Against the decision in this last mentioned proceeding, which was the only one appealable, the writ of error herein is directed.

Plaintiff in error therefore asks for a review upon the following:

Assignment of Errors.

The said Supreme Court erred in giving judgment against petitioner's right to practice law in the courts of these Islands.

First: Because said right is expressly guaranteed by article 9 of the Treaty of Paris, and is recognized by section 13 of the New Code of Civil Procedure of the Philippine Islands, (Act 190, Laws of the Philippine Commission, approved August 1st, 1901);

Second: Because, while the power of said Supreme Court to control and discipline those, practicing law within the Islands, as well as the right to prescribe reasonable regulations for such practice, is unquestioned, the said court has no power, jurisdiction or authority to deny or deprive a lawyer of his right to practice his profession, except for the reasons and in the manner provided in said Code of Civil Procedure; and,

Third: Because the right of the said Bosque to practice his profession was and is a vested right of which he may be deprived only by due process of law, and for the proper exercise and enjoyment of which right the recognition by the said Supreme Court, in the manner and form herein prayed, is essential.

Argument.

This case presents a single question, namely, the proper construction of article 9 of the Treaty of Paris. The article reads as follows:

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property or of its proceeds; *and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners.* In case they remain in the territory they may preserve their allegiance to the crown of Spain by making, before a court of record, within a year of the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

I.

The Supreme Court of the Philippines in its decision herein holds that the qualifying clause, *being subject in respect thereof to such laws as are applicable to other foreigners,* is conclusive against the right to continue the practice of his profession as claimed by plaintiff in error. This

cannot be so; first, because there is nothing in the context of the article quoted nor elsewhere in the treaty to warrant such a construction; secondly, because no such an intention is to be imputed to the framers of the treaty, for it were wholly unnecessary to specify rights which any and all foreigners enjoy, and wholly unjust to reduce to naught by the mere stroke of a pen all the rights incident to citizenship created under the flag of the former sovereign; and, lastly, even though such a construction be admissible there existed at the time of the ratification of the treaty no law disqualifying foreigners from becoming members of the bar in the Philippine Islands.

The Spanish law on this subject at the date of Treaty of Paris is to be found in the following authorities:

Article 56 of the Plan of Studies *(Plan de Estudios)* of 1836 reserved to the crown the discretionary power to grant a temporary or permanent license to *all foreigners,* applying for leave to *practice* their respective *professions* in Spain, upon their proving, that they had practiced the same in their own country; that their diploma or other authority to so practice was valid, and upon their paying the required fee.

The Royal Decree of July 26th, 1853, prescribed the regulation for the execution of the foregoing.

Vol. 5, Diccionario de Alcubilla, page 423.

To the same effect is article 96 of the Law of Public Instruction *(Ley de Instruccion Publica)* of November 9th, 1857, which provided that the *fee* to be paid by such foreigners should not exceed that paid for a corresponding *diploma* or license granted by a Spanish institution of learning.

Vol. 6, Diccionario de Alcubilla, page 798.

On May 12th, 1867, an *American doctor,* Jose Francisco Martinez, was duly authorized by *royal decree* to practice his profession in Cuba.

Vol. 1, Diccionario de Berriz, (1888) page 1341.

Notwithstanding these provisions the preamble of the *Decree of February 1869,* deprecates the lack of liberality in the laws of Spain governing the practice of professions under diploma or authority granted by a *foreign country,* and the adoption of courses of studies from such countries, as not consonant with liberty of education and not inspired by the altruistic spirit of a nation that should fear nothing of science from abroad, and states that it would be beneficial to open the door to all foreign erudition and attract to the fostering patronage of Spain the germs of genius and eminence.

Vol. 6, Diccionario de Alcubilla, page 873.

Article 25 of the Constitution of Spain of 1869 provided that *all foreigners* could freely establish

themselves in Spanish territory, carry on their *industry* or dedicate themselves to the *practice of any profession* for the exercise of which a diploma of competency issued by Spanish authority was not required.

Vol. 3, Diccionario de Alcubilla, page 348.

Article 39 of the Law of Aliens for the Ultramarine Colonies *(Ley de Extranjeria de Ultramar)*, May 19th and July 4th, 1870, puts in force the foregoing constitutional provision as regard such colonies, in accordance with the legislation in force therein.

Vol. 5, Diccionario de Alcubilla, page 428.

Article 2 of the Constitution of 1876, still in force, provides that all foreigners may establish themselves freely in Spanish territory, carry on their *industries* or devote themselves to the *practice of any profession* of which a diploma of aptitude issued by Spanish authority is not required. Those not naturalized, however, cannot hold office to which pertains *authority* or *jurisdiction.*

Vol. 3, Diccionario de Alcubilla, page 357.

Article 27 of the Spanish Civil Code, still in force in the Philippines, provides that foreigners enjoy in Spain *the same rights which the civil laws concede to Spaniards,* excepting the provision of *Article 2 of the Constitution* above quoted and international treaties.

Vol. 2, Diccionario de Alcubilla, page 566.

In conformity with the laws cited in the last two preceding paragraphs, article 109 of the Organic Law for the administration of justice in Spain and article 50 of the Organic Compilation for the administration of justice in the Ultramarine Colonies prescribe the qualifications for entering the department of justice in Spain and in the Ultramarine Colonies, respectively, and require that the aspirant be a Spaniard, because to this profession or office there pertains the jurisdiction and authority mentioned in the constitutional exception above cited, while articles 481 and 879 of said Organic Law and Organic Compilation, respectively; prescribing the qualifications for those aspiring to the *practice* of law neither requires that they be Spaniards nor possess diploma issued by Spanish authority.

The *Royal Decrees of 3, 10 and 11 of October, 1879,* respectively, authorized the governors of Porto Rico, Cuba and the Philippines to license *foreign graduates to practice their professions* in the respective countries.

Vol. 6, Diccionario de Alcubilla, page 1135-6.

The *Royal Decree of April 17th, 1886,* is a protest against a construction of the above mentioned *Decrees of 1879* whereby foreign graduates were permitted to hold *public office.* The decree qualifies this as an *"extensive interpretation,"* and points out that such persons are merely

authorized to *practice their respective professions.*

Vol. 6, del Diccionario de Alcubilla, page 999.

From the foregoing it will be seen that not only are foreigners not prohibited from practicing law in Spain and its Ultramarine possessions, but that they are, and since the year 1836, were given every encouragement by the Spanish government to do so. To contend otherwise at this late day is to ignore both history and law.

But aside from all questions as to the proper construction of the Treaty of Paris, and equally as to whether or not foreigners might be admitted to the practice of law under the sovereignty of Spain, there exists the clearest and most indisputable authority for plaintiff's claiming the right. This is found in section 13 of the new Code of Civil Procedure for the Philippine Islands, which went into effect October 1st, 1901, (Act 190, Laws of Philippine Commission). It reads:

The following persons, if not *specially declared ineligible,* are entitled to practice law in the Philippine Islands:

1. Those who have been duly licensed under the laws and orders of the islands *under the sovereignty of Spain* or of the United States and are in good and regular standing as members

of the bar of the Philippine Islands at the time of the adoption of this code.

2. Those who are hereafter licensed in the manner herein prescribed.

It is to be noted that no reference was made to the above law in its decision by the Supreme Court of the Philippines, although the same was cited by plaintiff in error in his petition herein for a re-hearing. [Tr. pp. 11 to 14.]

II.

The Supreme Court of the Philippines has neither power, jurisdiction nor authority to render in any proceeding had in this matter, a decision the effect of which would be to *deprive* plaintiff in error of the right to practice his profession. Sections 21 to 25 of the Code above quoted specify the only grounds upon and the only manner in which a lawyer may be *deprived* of the right to practice his profession. As well might the Philippine Supreme Court have declared that plaintiff in error was disqualified to practice because he professed a certain religious belief as to have assigned the reasons it did for such alleged disqualification. There can, therefore, be no question of *res adjudicata* herein.

III.

The right of plaintiff in error to practice his profession is a vested right of which he may be *deprived* only by due process of law. For the proper exercise and enjoyment of this right the recognition by the Insular Supreme Court, in the manner and form herein prayed is essential.

Cumnings vs. State of Missouri, 4 Wall. 356.
Ex Parte Garland, idem, 366.
Ely's Administrator vs. U. S., 171 U. S. 220-3.
Smith vs. U. S., 10 Peters 330.
Soulard vs. U. S., 4 Peters 511.
Strother vs. Lucas, 12 Peters 411.
Bryan vs. Mennett, 113 U. S. 179.

And in article 8 (2nd par.) of the Treaty of Paris is found an express declaration that the relinquishment or cession of sovereignty *"cannot in any respect impair the property or rights which by laws belong to the peaceful possession of property of all kinds, * * * of private individuals of whatsoever nationality such individuals may be."*

The Supreme Court of the Philippines has ascribed to the change of sovereignty in the Islands altogether too sweeping an effect, and one wholly at variance with the avowed purpose of the war on the part of the United States. That court seems to think that the United States gov-

ernment not only aimed at the expulsion of the armed forces of Spain by the shortest route available, but as well at the scarcely less direct and effectual disablement of peaceful Spanish subjects by depriving them of their means of earning a livelihood. Upon no other theory than this could the construction given to the Treaty of Paris by the court be sustained. It must, however, be said, in justice to the lower court, that its first decision herein was in strict accord with the provisional laws of the military regime then governing.

Justice and sound policy alike dictate that a change of sovereignty should be effected with the least possible injury to individual private rights.

Citizenship is not required for the practice of law under the United States government any more than it is required under the Spanish government. In the case of Bradwell vs. the State of Illinois, 16 Wall. 130, this court, speaking by Mr. Justice Miller, said: "The right (to practice law) in no sense depends upon citizenship of the United States. It has not, so far as we know, ever been made in *any state or in any case* to depend upon citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal Courts, who were not citizens of the United States or of any state."

Practical equality between alien and citizen has resulted from the entire freedom of intercourse that exists between civilized nations, so that it may be stated as a general rule applicable to all such nations that the elective franchise and the right to hold public office are almost the only advantages possessed by the citizen that are not enjoyed by the alien.

Webster on Citizenship, page 49.

As to the reference made by the Philippine Supreme Court to the effect upon the question of domicile or legal residence of plaintiff's leaving the Islands; the circumstances under which he departed therefrom, as shown by the transcript, pages 10 and 11, would seem to be sufficient to rebut any presumption of an abandonment. As shown by said record he never had any other intention than to return to the residence maintained therein by him and the fact of his having done so and still remaining there, notwithstanding the denial of his right to practice his profession would seem to be ample corroboration of *animus revertendi*. A person must always have one fixed domicile or legal residence which he never loses till he acquires another. There is no proof here of any intention on the part of Senor Bosque to either voluntarily abandon his home in the Philippines or acquire another elsewhere.

The judgment appealed from should be in all things reversed and the lower court directed to grant the petition.

Respectfully submitted,

EDGAR W. CAMP,

Attorney for Plaintiff in Error.

Los Angeles, California, Dec. 31st, 1906.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

JUAN GARCIA BOSQUE, PLAINTIFF IN error,
v.
THE UNITED STATES.
} No. 147.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Plaintiff in error made application to the Supreme Court of the Philippine Islands in February, 1901, to be admitted to practice law in the Philippine courts. The petition, which was supported by various certificates as to professional qualifications and good character, set forth that petitioner is a graduate of the University of Manila and practiced law in the Philippine Islands from 1892 until the Spanish courts were closed; that he has lost his Spanish nationality, is not a subject or citizen of any foreign government, and "consequently" has "the condition required by General Order, No. 29, July 19, 1899, of the United

States military government in these islands for continuing the practice of my profession." (Rec., pp. 1, 2.)

The petition was denied by the Supreme Court, without opinion, on the ground that the applicant "does not possess the political qualifications required by law for the practice of his profession in the Philippine Archipelago" (p. 7).

Plaintiff subsequently filed a petition for rehearing, accompanied by additional certificates and affidavits as to his professional and personal reputation. In this petition he changes his ground, apparently conceding his Spanish nationality, but claiming to be entitled to practice his profession under Article IX of the Treaty of Paris and under section 13 of the Code of Civil Procedure, which had been enacted since the date of his first petition (pp. 8–10).

The petition for rehearing was denied by the court in an opinion rendered by the Chief Justice which held that petitioner had not lost his Spanish nationality, but was a Spanish subject upon an equal footing with other foreign residents who were not entitled to practice the legal profession under the law either prior or subsequent to the Treaty of Paris (pp. 11–14).

Four years later, in January, 1906, plaintiff presented to the court the following motion:

> Appears Juan Garcia Borque and asks that the Honorable Supreme Court be pleased to declare that the petitioner has a right to practice as an attorney at law in the Philippines before all courts. This motion is founded upon the accompanying affidavit.

The affidavit referred to merely stated that the affiant, on April 10, 1899, and for eight years immediately prior thereto had practiced law continuously before the courts of the islands. The Supreme Court overruled the motion, and thereupon plaintiff sued out this writ of error (p. 15).

ASSIGNMENT OF ERRORS.

The errors assigned are based upon the following propositions (pp. 16–17):

1. That the right of petitioner to practice law in the courts of the Philippine Islands is expressly guaranteed by Article IX of the Treaty of Paris, and is recognized by section 13 of the Philippine Code of Civil Procedure.

2. That the Supreme Court of the Philippines has no power, jurisdiction, or authority to deny or deprive a lawyer of his right to practice his profession, except for the reason and in the manner provided in said Civil Code.

3. That the right of petitioner is a vested right, of which he can be deprived only by due process of law.

ARGUMENT.

I.

Plaintiff in error is a subject of Spain.

The point as to plaintiff's nationality is not embraced in the assignment of errors and does not appear to be pressed by counsel. Inasmuch, however, as plaintiff's first petition was based on his claim of right as a Filipino subject, and since the

Supreme Court in its opinion on the rehearing considers the question very fully, it may be discussed briefly here.

The agreement in the treaty of Paris (30 Stat., 1754) with respect to the nationality of Spanish subjects in the Philippines is as follows (Article IX):

> Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds. * * * *In case they remain in the territory* they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance, in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

That is to say, they were given the choice of remaining in the ceded territory or leaving it. If they elected to remain, they could preserve their Spanish nationality by making the declaration required by Article IX; otherwise it would be considered forfeited.

Plaintiff was evidently among those who chose to remove from the islands. It appears from the record that he left the Philippines for Europe on May 30, 1899, and remained away until January 11, 1901 (p. 5). He states in the affidavit accompanying his peti-

tion for rehearing that the reasons for his departure from the islands were the unsettled conditions prevailing there and the state of his health; that while abroad he lived in France and Spain, residing for the most part in Barcelona, where, however, he did not practice his profession, and that he did not return sooner to the Philippines because of newspaper reports as to personal unsafety in Manila. It seems that his family went abroad with him, returning to the islands some time after his own return (pp. 10, 11).

In his first petition he claims to have lost his Spanish nationality by reason of the fact that he had not made the necessary declaration of intention to preserve his allegiance to Spain. But that requirement was meant only for those who remained in the territory, and was not necessary in his case, since he removed from the islands. As the Philippine Supreme Court said, he carried his Spanish nationality with him on his departure; it could only be lost by a continuous residence in the islands and failure to declare the intention of preserving it within the time specified. As has been shown, plaintiff was absent from the Philippines during the whole of the period allowed for making such declarations, remaining away several months after its expiration, and the conclusion is therefore inevitable that he did not become a Filipino subject of the new sovereignty, but that he continued to remain a Spaniard. The fact that he intended to return can not affect this conclusion; it was not necessary in order to retain his Spanish

nationality that he should remain away permanently. He was absent for more than a year and a half. If the *animus revertendi* were to control, what would be the time limit, if any, of absence from the islands which would determine the question of nationality? Suppose, for instance, plaintiff left with the intention of returning, say, in ten or fifteen years, could it be held, when he came back at the end of that period, that he was entitled to claim all the rights of a Filipino subject merely because he had not formally declared his intention to remain a Spaniard within a year after the ratification of the treaty, and had preserved his rights of property in the Philippines, as he did in the present case?

II.

Being a Spaniard, plaintiff is not entitled to practice law in the Philippine Islands.

In addition to the provisions of Article IX of the treaty with Spain already cited, it is also agreed that Spanish subjects in the Philippines—

> shall also have the right to carry on their industry, commerce, and professions, *being subject in respect thereof to such laws as are applicable to other foreigners.*

The state of the Spanish law in respect to the practice of the legal profession by foreigners, at the time of the ratification of the treaty, seems to have been as follows:

Prior to the constitution of 1869, the Crown reserved to itself the discretionary power to grant

temporary or permanent licenses to foreigners to practice their professions, provided they established the validity of their diplomas, that they had practiced in their native country for six years, and could pay the required fee. (Royal Order of July 26, 1853; Diccionario de Alcubilla, vol. 5, p. 423; article 96, Law of Public Instruction, id., vol. 6, p. 798.)

The decree of February 6, 1869 (Alcubilla, vol. 6, p. 873), cited by opposing counsel, shows that at that time aliens did not freely enjoy the right to practice the professions; it expressly provides for the admission of foreign doctors to practice, under very stringent conditions, but does not include lawyers.

Article 25 of the constitution of 1869 provides that foreigners may freely establish themselves in Spanish territory, and exercise their industry or dedicate themselves to any profession *for which no certificate (titulos) of aptitude issued by the Spanish civil authorities shall be required.* In 1870 this provision was put in force in the Philippines by article 29 of the Law of Foreigners for the Colonies (Alcubilla, vol. 5, p. 428).

Article 2 of the constitution of 1876 is identical with article 25 of the constitution of 1869, and adds that unnaturalized persons can not hold office to which is attached any authority or jurisdiction.

Article 27 of the Civil Code of Spain, extended to the Philippines in 1889 and in force in the islands at the time of the American occupation, provides that foreigners may enjoy in Spain the same rights which

the civil laws grant to Spaniards, *with the exception of the restrictions in article 2 of the constitution of 1876*, and excepting contrary provisions in foreign treaties. As already stated, article 2 excepted the professions for which a certificate of proficiency issued by the Spanish authorities was required. Now, it can not be supposed that the legal profession could be practiced in Spain any more than elsewhere without a certificate or diploma. It is true that the laws referred to above allowed a foreign diploma to be accepted as part qualification for the privilege accorded foreigners or foreign graduates; but such diploma had still to be examined carefully and passed upon by the Spanish authorities and a license issued thereon, and what was that license but itself a certificate or diploma of aptitude issued by Spanish authority, bringing the legal profession within the exception of article 2 of the constitution?

The Royal Orders of October 10 and 11, 1879, authorize the governors of Porto Rico and the Philippines to enable foreign graduates who request it to practice their professions, *as far as such graduates are qualified to practice such professions* (Alcubilla, vol. 6, pp. 1135–1136). These decrees, however, granted no new power to license anyone not already fully qualified under existing laws; it is doubtful whether they include the practice of law, and they do not necessarily apply to foreigners, but may refer to graduates from foreign institutions of learning who yet may be citizens and subjects of Spain.

Furthermore, in addition to other requirements before being admitted to practice, all lawyers were obliged to take an oath of allegiance, whereby they were bound to uphold the constitution, to be faithful to the King, etc. (Organic Compilation for the Administration of Justice, art. 870; id. for the Ultramarine Colonies, art. 477.) This in itself would appear to be conclusive against plaintiff's contention.

In short, from the foregoing review, not only is there nothing to show that aliens were permitted to practice law in Spain and her colonies, but I submit that the contrary clearly appears.

It is unnecessary, however, to decide whether or not foreign attorneys were allowed to practice in Spain and her possessions, because it is manifest that the words "such laws as are applicable to other foreigners" in the ninth article of the treaty refer not to the Spanish laws, but to the laws enacted by the new sovereignty. If the treaty framers had been indicating the status of aliens before the islands came into American possession, they would not have used the expression "other foreigners." Spaniards were not foreigners then, but only became so after the cession of the islands. According to plaintiff's contention, the clause should be construed as if it read, "being subject to such laws as are now (or have been) applicable to foreigners." It is evident that the proper construction is rather as though the words were, "to such laws as *shall be* applicable to other foreigners."

If the Government's theory is correct, there can be no doubt from the following examination of the laws and regulations on the subject, put in force in the Philippines first by the military and then by the civil authorities, that plaintiff is not entitled to the privilege which he seeks.

On July 19, 1899, the military governor of the Philippines, recognizing the necessity of regulations governing the admission of lawyers, promulgated for that purpose certain regulations known as General Orders, No. 29, series of 1899, section 2 of which provides as follows:

> Any resident of the Philippine Islands, *not a subject or citizen of any foreign government,* of the age of 23 years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all of the courts of these islands.

By section 3 every applicant is required to produce satisfactory testimonials of good moral character and to undergo a strict examination in open court by the justices of the Supreme Court. If upon examination he is found qualified, he shall be admitted to practice in all the courts of the Philippine Islands, and a certificate of the record of the court's order to that effect shall be given him, which certificate shall be his license (sec. 4). Section 5 is as follows:

> Every resident of these islands, *not a citizen or subject of any foreign government,* who has been admitted to practice law in the Supreme

> Court of the United States, or in any Circuit Court of Appeals, Circuit Court or District Court thereof, or in the highest court of any State or Territory of the United States, may be admitted to practice in the courts of these islands upon the production of his license. Likewise all persons duly accredited as lawyers in the Philippine Islands on the 31st day of January, 1899, who are residents of said islands, *and not subjects or citizens of another government*, may be admitted as attorneys and counselors in all the courts of the islands: *Provided*, That all applicants under this section shall furnish satisfactory evidence of good moral character and professional standing and take the prescribed oath: *And provided further*, That the court may, if it deems advisable, examine the applicant as to his qualifications.

Every person upon admission must take an oath of allegiance to the United States (sec. 6).

If plaintiff is a Spaniard, as he now seems to concede, he was certainly not admissible to practice and did not become a member of the bar under the provisions of this law.

General Orders, No. 29, was followed by act No. 190 of the Philippine Commission, being the Code of Civil Procedure for the Philippine Islands (1 Pub. Laws, p. 378), section 13 of which is as follows:

> The following persons, *if not specially declared ineligible*, are entitled to practice law in the courts of the Philippine Islands:
>
> 1. Those who have been duly licensed under the laws and orders of the islands under the

sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this Code.

2. Those who are hereafter licensed in the manner herein prescribed.

This enactment is relied on by plaintiff as the "clearest and most indisputable authority" for his claiming the right he seeks. But a close examination of the law shows quite the reverse. In the first place, the applicants must be "in good and regular standing as members of the bar of the Philippine Islands *at the time of the adoption of this code.*" This description does not apply to plaintiff in error. The Civil Code was enacted August 7, 1901, to take effect September 1, 1901. He had been denied permission to practice law by the Supreme Court of the Philippines on July 27, 1901, upon the ground that he did not possess the political qualifications required by law. He was not, therefore, at the date of the adoption of the code, in good and regular standing as a member of the bar. Counsel concedes (p. 15, opposing brief) that this first decision of the Supreme Court was in strict accord with the provisional laws of the military régime governing the islands at that time; in other words, it was in accordance with the provisions of General Orders, No. 29.

In the second place, while the act declares entitled to practice law "those who have been duly licensed under the laws and orders of the islands, under the sovereignty of Spain," etc., that clause and the succeeding one as to good and regular standing as

members of the bar are governed by the words "if not specially declared ineligible." Plaintiff in error, as already shown, was among those who *were* specially declared ineligible by General Orders, No. 29, as being a citizen or subject of a foreign government. Besides, section 14 of the code, which prescribes the qualifications of applicants, requires them to be residents of the Philippine Islands, not subjects or citizens of any foreign government. The provisions of this section may be fairly construed to apply to those seeking admission under section 13 (par. 1); but even if they do not, plaintiff's status had already been determined by General Orders, No. 29.

Referring to other sections of the Code on this subject, section 15 makes provision for examinations of applicants, which may be waived where the applicant has been previously admitted to practice law in the Philippine courts. Further provisions of the law deal with the place and manner of examinations and the granting of licenses, taking of oaths, disbarments and suspensions, fees, etc. Section 19 provides for the admission without examination of any resident, *not a citizen or subject of any foreign government*, who has been admitted to practice law in the courts of the United States.

Thus it is seen that running all through the laws and regulations on the subject is the explicit reservation as to aliens, making it evident beyond question that the intention of the lawmakers is and has been from the first to require all members of the bar to be

either citizens of the United States or those enjoying the status of natives of the Philippines, and to exclude all foreigners from the legal profession in the islands.

III.

The Supreme Court of the Philippines had full power, jurisdiction, and authority to render the decision in this case.

The effect of the court's decision was not, as counsel declares, to *deprive* plaintiff in error of the right to practice his profession. The right had been taken away by virtue of the stipulations of the treaty of Paris and by the subsequent laws and regulations of the new sovereignty. The first decision, as counsel concedes, was in accordance with the existing law; the decision on the rehearing was no less in conformity with the law, because, as already shown, section 13 of the Civil Code, which had in the meantime been enacted, did not in any way change the status of plaintiff in error. Sections 21–25 of the Code, which counsel contends prescribe the only grounds upon which a lawyer may be deprived of the right to practice, relate to the removal or suspension from the bar of attorneys already practicing, and have no application whatever to the case of one who has been denied admission to practice at all.

IV.

The right claimed by plaintiff in error is not a vested right.

The right to practice law is not an absolute right, but is a privilege or franchise granted by the legislature and the courts. That is, the legislature may prescribe the qualifications necessary for admission to practice, and the admission of the applicant is an exercise of judicial power, the order of admission being the judgment of the court that the party possesses the requisite qualifications as attorney. (*Ex parte Garland*, 4 Wall., 333.) The State may prescribe regulations controlling the exercise of the privilege, may refuse it altogether, or may revoke it.

Mr. Justice Bradley, in his concurring opinion in the case of *Bradwell* v. *United States*, 16 Wall., 130, 142, said:

> It is the prerogative of the legislature to prescribe regulations founded on nature, reason, and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence.

In that case the court affirmed a decision of the Supreme Court of Illinois denying the application of a woman for a license to practice law, a State statute requiring that persons before admission to practice as attorneys must obtain a license for that purpose from some two of the justices of the Supreme Court. Mr. Justice Miller, delivering the opinion of the court, held (16 Wall., at p. 139) that the right to admission

to practice in the courts of a State is not one of the privileges and immunities belonging to citizens of the United States which the States are forbidden by the Constitution to abridge.

In *Languille* v. *State*, 4 Tex. App., 312, it was held that a license to practice law is not a contract, investing the person to whom it is granted with rights which can not be interfered with by the State, but a mere grant of a privilege, which the State may revoke, or upon which it may impose such conditions as may be demanded by the public interest.

In *State* v. *Gazley*, 5 Ohio, 14, answering the same contention, that a license to practice is a contract, the court said:

> We can not consider the license in this light, although the effect of the license * * * incidentally confers valuable privileges; yet the design of the license is to protect the community from consequences of a want of professional qualifications. * * * Consequently the license can not be holden to confer any vested privileges, but is liable to be modified in any manner which the public welfare may demand.

See also *Cohen* v. *Wright*, 22 Cal., 293; *Ex parte Yale*, 24 id., 241; *Goldthwaite* v. *Montgomery*, 50 Ala., 486; *McCaskell* v. *State*, 52 id., 510; *Sprayberry* v. *Atlanta*, 13 S. E. Rep., 197; *In re Admission to Bar*, 84 N. W. Rep., 611.

Opposing counsel quote from the eighth article of the treaty of Paris, which declares that the cession of

BOSQUE v. UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 147. Submitted January 29, 1908.—Decided March 23, 1908.

Under the Treaty of Paris of 1898, between the United States and Spain, a Spanish resident of the Philippine Islands, who left there in May, 1899, without making any declaration of intention to preserve his allegiance to Spain and remained away until after the expiration of eighteen months after the ratification of the treaty continued to be a Spaniard, and did not, even though he intended to return, become a citizen of the islands under the new sovereignty, and therefore is not eligible to admission to practice at the bar under the rules established by the military and civil authorities of the Philippine Islands.

The laws applicable to other foreigners referred to in Article XIX of the treaty referred not to Spanish laws but to the laws to be enacted by the new sovereignty. Spaniards only became foreigners after the cession.

The right to practice law is not property within the protection of Article VII of the treaty.

1 Philippine Rep. 88, affirmed.

PLAINTIFF in error applied to the Supreme Court of the Philippine Islands in February, 1901, to be admitted to practice law in the Philippine courts. His petition was supported by various certificates as to professional qualifications and good character, and set forth that petitioner was a graduate of the University of Manila; and practiced law in the Philippine Islands from 1892 until the cessation of the Spanish courts; "that he is of good character, and has not been inscribed in the record of Spanish nationality, in consequence whereof I have lost this, in accordance with the provisions of the Treaty of Paris, and therefore I am neither a subject nor citizen of any foreign government, and consequently, in my opinion, have the condition required by General Order No. 29, July 19, 1899, of the United States Military Government in these islands for continuing the practice of my profession."

July 27, 1901, the petition was denied by the Supreme Court, without opinion, on the ground that the applicant "does not

possess the political qualifications required by law for the practice of his profession in the Philippine Archipelago."

Plaintiff subsequently filed a petition for rehearing, accompanied by additional certificates and affidavits as to his professional and personal reputation. In this petition he claimed to be entitled to practice his profession under Article IX of the Treaty of Paris and under § 13 of the Code of Civil Procedure, which had been enacted since the date of his first petition.

The petition for rehearing was denied by the court in an opinion rendered by the Chief Justice, 1 Philippine Rep. 88, which held that petitioner had not lost his Spanish nationality, but was a Spanish subject upon an equal footing with other foreign residents who were not entitled to practice the legal profession under the law, either prior or subsequent to the Treaty of Paris.

In January, 1906, plaintiff in error presented to the court the following motion:

"Appears Juan Garcia Bosque and asks that the Honorable Supreme Court be pleased to declare that the petitioner has a right to practice as an attorney at law in the Philippines before all courts. This motion is founded upon the accompanying affidavit."

The affidavit referred to stated that the affiant, on April 10, 1899, and for eight years immediately prior thereto, had practiced law continuously before the courts of the islands. The Supreme Court overruled the motion, and thereupon plaintiff sued out this writ of error.

Mr. Edgar W. Camp for plaintiff in error:

The qualifying clause, in the Treaty of Paris, "being subject in respect thereof to such laws as are applicable to other foreigners," is not conclusive against the right to continue the practice of his profession as claimed by plaintiff in error, because, first, there is nothing in the context of the article quoted nor elsewhere in the treaty to warrant such a construction; secondly, because no such intention is to be imputed to

the framers of the treaty, for it were wholly unnecessary to specify rights which any and all foreigners enjoy, and wholly unjust to reduce to naught by the mere stroke of a pen all the rights incident to citizenship created under the flag of the former sovereign; and, lastly, even though such a construction be admissible there existed at the time of the ratification of the treaty no law disqualifying foreigners from becoming members of the bar in the Philippine Islands. Plan of Studies (Plan de Estudios) of 1836; Royal Decree of July 26, 1853; Vol. 5, Diccionario de Alcubilla, p. 423; Same, Vol. 6, p. 798; Vol. 1, Diccionario de Berriz (1888), p. 1341; Diccionario de Alcubilla, p. 873, (Vol. 6); Vol. 3, p. 348; Vol. 5, p. 428; Vol. 3, p. 357; Vol. 2, p. 566.

The Supreme Court of the Philippines has neither power, jurisdiction nor authority to render in any proceeding had in this matter, a decision the effect of which would be to deprive plaintiff in error of the right to practice his profession. Sections 21 to 25 of the Code specify the only grounds upon and the only manner in which a lawyer may be deprived of the right to practice his profession. As well might the Philippine Supreme Court have declared that plaintiff in error was disqualified to practice because he professed a certain religious belief as to have assigned the reasons it did for such alleged disqualification. There can, therefore, be no question of *res adjudicata* herein.

The right of plaintiff in error to practice his profession is a vested right of which he may be deprived only by due process of law. For the proper exercise and enjoyment of this right the recognition by the Insular Supreme Court, in the manner and form herein prayed, is essential. *Cummings* v. *State of Missouri*, 4 Wall. 356; *Ex parte Garland*, 4 Wall. 366; *Ely's Administrator* v. *United States*, 171 U. S. 220–223; *Smith* v. *United States*, 10 Peters, 330; *Soulard* v. *United States*, 4 Peters, 511; *Strother* v. *Lucas*, 12 Peters, 411; *Bryan* v. *Mennett*, 113 U. S. 179.

And in Article VIII (2nd par.) of the Treaty of Paris is

found an express declaration that the relinquishment or cession of sovereignty "cannot in any respect impair the property or rights which by laws belong to the peaceful possession of property of all kinds . . . of private individuals of whatsoever nationality such individuals may be."

The Solicitor General for United States:

Plaintiff in error did not become a citizen of the Philippine Islands under the new sovereignty, but continued to remain a Spaniard. His Spanish nationality could only be lost by continuous residence in the islands and failure to declare his intention of retaining it within the time specified (Art. IX, Treaty of Paris, 30 Stat. 1754). He was absent from the islands during the whole of the period allowed for making such declarations, and remained away for more than a year and a half. It makes no difference that he intended to return; it was not necessary in order to retain his Spanish nationality that he should remain away permanently.

As a Spaniard, he is not entitled to practice law in the Philippines. Under the Spanish law foreigners were not allowed to practice the legal profession in Spain and her colonies. Royal Order of July 26, 1853; Diccionario de Alcubilla, Vol. 5, p. 423; Law of Public Instruction, Art. 96, *id.*, Vol. 6, p. 798; decree of February 6, 1869, Alcubilla, Vol. 6, p. 873; Art. 25, Constitution of 1869; Art. 27, Civil Code of Spain; Royal Orders of October 10, 11, 1879, Alcubilla, Vol. 6, pp. 1135–1136. That point is immaterial, however, because the provision in Article IX of the Treaty of Paris that Spanish subjects in the Philippines shall have the right to carry on their professions, etc., subject to "such laws as are applicable to other foreigners" refers to the laws enacted by the new sovereignty. Spaniards were not "foreigners" at the time of the treaty, but only became so after the cession of the islands, and it is evident that the words meant such laws as *shall be* applicable to other foreigners.

Under the laws and regulations on the subject, put in force

in the Philippines first by the military and then by the civil authorities, plaintiff is not entitled to the privilege which he seeks. General Orders, No. 29, series of 1899, §§ 2–6; Philippine Code of Civ. Pro., §§ 13, 15, 19; 1 Pub. Laws, p. 378. The explicit reservation as to aliens runs through all the laws and regulations, making it clear that the intention was and had been from the first to require all members of the bar to be either citizens of the United States or those enjoying the status of natives of the Philippines, and to exclude all foreigners from the legal profession in the islands.

The effect of the decision of the Philippine court was not to deprive plaintiff of the right to practice his profession. The privilege ceased by virtue of the stipulations of the treaty of Paris and the subsequent laws and regulations of the new sovereignty. Those sections of the Code which prescribe the grounds upon which a lawyer may be deprived of the right to practice relate to the removal or suspension from the bar of attorneys already practicing, and have no application to the case of one who has been denied admission to practice at all.

The right claimed by plaintiff is not a vested or property right. *Ex parte Garland*, 4 Wall. 333; *Bradwell* v. *United States*, 16 Wall. 130; *Languille* v. *State*, 4 Tex. App. 312; *State* v. *Gazley*, 5 Ohio, 14; *Cohen* v. *Wright*, 22 California, 293; *Sprayberry* v. *Atlanta*, 13 S. E. Rep. 197. The property rights intended to be protected by the stipulation in the eighth article of the Treaty of Paris do not relate to the rights connected with trades and professions. As to definition of *propiedad*, used in the Spanish text of the treaty; see 4 Escriche, 736.

Mr. Chief Justice Fuller, after making the foregoing statement, delivered the opinion of the court.

Plaintiff in error contends: (1) That his right to practice law in the Philippine Islands was expressly guaranteed by Article IX of the Treaty of Paris and recognized by § 13

of the Philippine Code of Civil Procedure; (2) That the Supreme Court of the Philippine Islands had no power, jurisdiction or authority to deny or deprive a lawyer of his right to practice his profession, except for the reasons and in the manner provided in the Civil Code; (3) That plaintiff in error's right so to practice was a vested right, of which he could be deprived only by due process of law.

Article IX of the Treaty of Paris, 30 Stat. 1754, provided:

"Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

The record shows that plaintiff in error left the Philippines for Europe on May 30, 1899, and remained away until January 11, 1901. In the affidavit accompanying his petition for rehearing he states that the reasons for his departure from the islands were the unsettled conditions prevailing there and the state of his health; that while abroad he lived in France and Spain, residing for the most part in Barcelona; that he did not return sooner to the Philippines because of newspaper reports as to personal unsafety in Manilla. In his first petition he

claims to have lost his Spanish nationality because he had not made the necessary declaration of intention to preserve his allegiance to Spain, but that requirement was meant only for those who remained in the territory, and was not necessary in his case, since he removed from the islands.

In the opinion of the Philippine Supreme Court he carried his Spanish nationality with him on his departure, and it could only be lost by continuous residence in the islands and failure to declare his intention of retaining it within the time specified. But plaintiff was absent from the Philippines during the whole of the period allowed for making such declaration, and remained away several months after its expiration. It follows that he did not become a citizen of the islands under the new sovereignty, but that he continued to remain a Spaniard. The fact that he intended to return does not affect this conclusion. It was not necessary in order to retain his Spanish nationality that he should remain away permanently, and he was absent for more than a year and a half.

The question whether aliens were permitted to practice law in Spain and her colonies is elaborately argued, but it is quite unnecessary to pass upon it, since it is manifest that the words in Article IX of the treaty, "such laws as are applicable to other foreigners," referred not to the Spanish law, but to the laws enacted by the new sovereignty. Spaniards only became "foreigners" after the cession of the islands, and it is obvious that the words meant such laws as shall be applicable to other foreigners.

We think it evident that plaintiff under the laws and regulations on the subject put in force in the Philippines, first by the military and then by the civil authorities, was not entitled to the privilege which he sought.

On July 19, 1899, the military governor promulgated, in respect to the admission of lawyers, certain regulations, known as "General Orders, No. 29, Series of 1899," § 2 of which provides as follows:

"Any resident of the Philippine Islands, *not a subject or*

citizen of any foreign government, of the age of 23 years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all of the courts of these islands."

By § 3 every applicant is required to produce satisfactory testimonials of good moral character and to undergo a strict examination in open court by the justices of the Supreme Court. If upon examination he is found qualified he shall be admitted to practice in all the courts of the Philippine Islands, and a certificate of the record of the court's order to that effect shall be given him, which certificate shall be his license. (Sec. 4.) Section 5 is as follows:

"Every resident of these islands, *not a citizen or subject of any foreign government*, who has been admitted to practice law in the Supreme Court of the United States, or in any Circuit Court of Appeals, Circuit Court or District Court thereof, or in the highest court of any State or Territory of the United States, may be admitted to practice in the courts of these islands upon the production of his license. Likewise all persons duly accredited as lawyers in the Philippine Islands on the 31st day of January, 1899, who are residents of said islands, *and not subjects or citizens of another government*, may be admitted as attorneys and counselors in all the courts of the islands: *Provided*, that all applicants under this section shall furnish satisfactory evidence of good moral character and professional standing and take the prescribed oath: *And provided further*, That the court may, if it deems advisable, examine the applicant as to his qualifications."

Every person upon admission must take an oath of allegiance to the United States. (Sec. 6.)

It is conceded that plaintiff did not become a member of the bar under the provisions of this law.

General Orders, No. 29, was followed by Act No. 190 of the Philippine Commission, being the Code of Civil Procedure for the Philippine Islands (1 Pub. Laws, p. 378), § 13 of which is as follows:

"The following persons, *if not specially declared ineligible,* are entitled to practice law in the courts of the Philippine Islands:

"1. Those who have been duly licensed under the laws and orders of the islands under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this code.

"2. Those who are hereafter licensed in the manner herein prescribed."

It will be perceived that the applicants must be "in good and regular standing as members of the bar of the Philippine Islands *at the time of the adoption of this code.*" This description does not apply to plaintiff in error. The Civil Code was enacted August 7, 1901, to take effect September 1, 1901. He had been denied permission to practice law by the Supreme Court of the Philippines on July 27, 1901, upon the ground that he did not possess the political qualifications required by law. He was not, therefore, at the date of the adoption of the code in good and regular standing as a member of the bar.

It is true § 13 declares "those who have been duly licensed under the laws and orders of the islands, under the sovereignty of Spain," etc., are entitled to practice law, but that applies only to persons "not specially declared ineligible," and plaintiff in error was declared ineligible because a citizen or subject of a foreign government.

Reference may well be made in this connection to § 14 of the act, which reads:

"Any resident of the Philippine Islands, *not a subject or citizen of any foreign government,* of the age of twenty-three years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as a member of the bar of the islands and to practice as such in all their courts."

Section 19 provides for the admission without examination of any resident, *not a citizen or subject of any foreign government,*

who has been admitted to practice in any of the courts of the United States.

It seems clear from the provisions of General Orders, No. 29, and of the code, that the intention was, and has been from the first, to require all members of the bar to be either citizens of the United States or those enjoying the status of natives of the Philippines, and to exclude all foreigners from the legal profession in the islands.

If it be conceded that plaintiff in error possessed the privilege of practicing his profession in the islands at the time Spain surrendered her sovereignty over them, the enjoyment of that privilege ceased by virtue of the stipulations of the Treaty of Paris and the subsequent laws and regulations of the new sovereignty inconsistent therewith; and the effect of the decision in the present instance was not to deprive plaintiff in error of that privilege. Counsel for plaintiff in error cite various sections of the code which prescribe the grounds upon which a lawyer may be deprived of the right to practice, but they relate to the removal or suspension from the bar of attorneys already practicing, and have no application to the case of one who has been denied admission to practice at all.

The eighth article of the Treaty of Paris declares that the cession of sovereignty "cannot in any respect impair the property rights which by law belong to the peaceful possession of property of all kinds," etc., but that stipulation does not relate to the rights connected with trades and professions. The word "propiedad" used in the Spanish text is defined by Escriche as the right to enjoy and dispose freely of one's things in so far as the laws do not prohibit it. 4 Escriche, 736. The same word appears in Article IX, providing that Spanish subjects may retain, whether they remain or remove from the territory, "all their rights of property, including the right to sell or dispose of such property or of its proceeds." Clearly the right to practice law was not referred to as "property" there, and they are followed by the words "and they shall also have the right to carry on their industry, commerce and professions,

being subject in respect thereof to such laws as are applicable to other foreigners."

We concur with the conclusions of the Supreme Court of the Philippines, and its judgment is

Affirmed.